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Date of Decision: 8.1.1996

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr D D Vyas, Advocate for the petitioner
Mr N N Pandya, AGP and M/s.Trivedi Gupta, Advocates for the respondents.

CORAM: N N MATHUR, J.
(January 01, 1996)

ORAL JUDGMENT

By way of this Special Civil Application, the petitioner-Palitana Municipality, has challenged the order dated 29.3.1986 passed by the Collector, Bhavnagar, whereby 2 acres 23 Guntas of land out of survey No.498 has been allotted to respondent No.2-Gujarat Tourism Corporation at a price which may be fixed by the Deputy Town Planner, Junagadh.

2. The say of the petitioner-Municipality is that by Notification datted 3.5.1950, certain properties were vested in the Palitana Municipality. Thereafter, by a

subsequent Notification dated 6.7.1950 all vacant and unsold plots of land admeasuring 500 sq.yds. or less between two houses and abutting on roads and situated within the limits of the respective municipalities which were not reserved by the Government and it was further decided by the Government that the said plots shall vest in and belong to the respective municipalities and shall be under the direction, management and control of the respective municipalities. By a subsequent Notification dated 5.3.1956, the Government of Saurashtra had transferred all the vacant plots within the municipal limits of Palitana to the said municipality. The specific case of the petitioner is that no plot of land was reserved by the Government for any purpose though in case of other municipalities, it had reserved certain plots for certain purposes. The further say of the petitioner is that by subsequent Notification dated 7.9.1980, the Govoernment of Gujarat issued certain clarifications. However, by another Notification dated 17.1.1980, the Government of Gujarat decided that all open plots of land belonging to the Government shall vest in the respective municipalities. By another Government Notification dated 18.2.1981, it was clarified that all plots of land except those which have been reserved for the specific purpose, would vest in the respective municipalities. It is also pointed out that the Government, by Resolution dated 10.9.1984, had given the land to the Taluka Panchayat of Palitana and similarly to the judicial department. Those allotments were challenged before the appropriate forum and which ultimately reached to the Government Revenue Tribunal. At the time of filing of the petition, the appeal in that respect was pending before the Gujarat Revenue Tribunal.

3. Mr D D Vyas, learned Advocate appearing for the petitioner submits that the said appeals have now been decided in favour of the Municipality. The Tribunal has held that the land is vested in the municipality and the State Government has no authority to transfer by way of allotment to different departments.

4. The Deputy Collector, Palitana addressed a letter dated 6.2.1986 to the petitioner-municipality requesting to offer its remarks on the question whether the municipality has any objection if 2 acres of land out of survey no.498 is allotted to the respondent-Gujarat Tourism Corporation. The Municipality questioned the right of the Collector to dispose of the said land. However, by the impugned order, the subject land has been transferred by the Collector to

the respondent No.2.

5. The controversy involved in the present Special Civil Application is concluded by a decision of this Court rendered in Special Civil Application No. 3135/81 decided on 9.7.1990. In identical circumstance, the Porbandar Nagarpalika also challenged the decision of the Collector transferring the land situated within the limits of the said municipality. This Court, after considering the various Notifications and the position of law, held that all open plots of land situate within the municipal limits of the said Nagarpalika vest in and belong to it, and it has a right to dispose of the same by sale, lease etc., of course subject to the provisions and for the purpose of the Act. It was further held that so long as the land continues to vest in the Municipality, neither the State Government nor the Collector would have power to deal with such open plots of land. The said decision has been upheld by the Division Bench of this Court in LPA No.89/91 decided on 14.10.1991. I am told that that matter was unsuccessfully carried to the Apex Court.

6. The ratio of the Probandar Municipality case applies to the present case with full force. At this stage, it is pointed out that the impugned order dated 29.3.1986 has been amended and the land in question has been allotted instead of Gujarat Tourism Corporation to Director, Tourism Department, State of Gujarat. Copy of the said Notification dated 10.5.1986 is placed on record. Learned Advocate appearing for the respondent No.2 pointed out that the said order was modified in view of the application made by the Director of Tourism Corporation.

7. In view of the aforesaid, this Special Civil Application is allowed and the order of the Collector dated 29.3.1986 and the amended order dated 10.5.1986 are quashed and set aside.

Rule made absolute to the aforesaid extent. The interim relief stands vacated.

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